Supreme Court, U.S.
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No. 87-1885

In The

Supreme Court Of The United States

OCTOBER TERM, 1988

MAGIC II,
Petitioner,

v.

JOHN GROPPO, Commissioner of Revenue Services of State of Connecticut,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

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QUESTIONS PRESENTED

1. Whether the State's assessment of a use tax on a vessel used in the State of Connecticut interferes with exclusive federal jurisdiction over admiralty and maritime cases or with federal law regarding the priority of maritime liens?

2. Whether a state use tax which is not imposed upon "the privilege of entering, remaining in or departing from a port," violates the tonnage clause of the U.S. Constitution?

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Huse v. Glover, 119 U.S. 543, 549–50, 7 S.Ct. 313, 30 L. Ed. 487 (1986) 1

Provisions of U.S. Constitution:

Article III, Section 2, Clause 1 1

Article I, Section 10, Clause 3 1

REASONS FOR DENIAL OF THE PETITION

The petitioner states that, "[t]he decision below should be reviewed because it invalidates both Article III, Section 2, Clause 1 of the U.S. Constitution and Article I, Section 10, Clause 3 of the U.S. Constitution." (Petition at 4)

1. It is undisputed that Article III, Section 2, Clause 1 of the United States Constitution vests exclusive jurisdiction over all cases of admiralty and maritime jurisdiction in the federal courts. However, this case is not an admiralty or maritime case but rather involves an assessment for state use tax against the corporation Magic II, arising out of the use of a yacht owned by it in the State of Connecticut.

The petitioner's argument presumes that it will not pay a final judgment for the use tax and that the Commissioner will seize its yacht to secure payment and that the liens of other creditors, who may have priority under maritime law, would be defeated. The arguments asserted by the petitioner, although raised below, are not properly presented by the facts of record. The petitioner's argument is predicated entirely upon an hypothetical series of events. The petitioner, however, is limited to the record in the instant case, which reveals that no seizure of its yacht has either taken place or has been threatened. The Commissioner, in seeking payment of a final judgment in this case would, of course, do so in accordance with federal maritime law. Therefore, the petitioner's argument that the Connecticut Supreme Court's decision upholding the use tax assessment "renders federal jurisdiction of maritime liens invalid" (Petition at 5) is completely without merit.

2. With regard to the petitioner's second claim to the effect that the use tax assessment is invalid under Article I, Section 10, Clause 3 of the Constitution, which prohibits states from laying any duty of tonnage, this Court stated in *Huse v. Glover,* 119 U.S. 543, 549-50 (1886), that: "[a] duty of tonnage within the meaning of the Constitution is a charge upon a vessel, as an instrument of commerce, 'for entering [or lying in] or leaving a port.' "

The Connecticut Supreme Court correctly disposed of the petitioner's claim as follows:

> The tax in this case is obviously not imposed on the privilege of entering, remaining in or departing from a port. It is based on the purchase of a yacht for use in Connecticut, and such use in Connecticut. It is assessed once. Its assessment has no relation to a vessel entering or leaving a port. Thus, it is not invalid as constituting a "Duty of Tonnage."

206 Conn. at 265.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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